In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1410

CERTAIN SPACE IN THE PROPERTY KNOWN AS THE CHIMES BUILDING, 109 WEST ONONDAGA STREET, SYRACUSE, ONONDAGA COUNTY, STATE OF NEW YORK, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. App. A) is reported at 320 F. Supp. 491. The opinion of the court of appeals (Pet. App. B) is reported at 435 F. 2d 872.

JURISDICTION

The judgment of the court of appeals was entered on December 1, 1970. The petition for a writ of certiorari was filed on March 1, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The Anti-Assignment Act (31 U.S.C. 203) provides in pertinent part:

> All transfers and assignments made of any claim upon the United States * * * shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. * * *

QUESTIONS PRESENTED

1. Whether, when the United States has specifically waived the requirements of the Anti-Assignment Act (31 U.S.C. 203), the assignment by a condemnee to another of "any sum of money found to be due from the United States" in a pending condemnation suit precludes the assignor from disputing, on the ground that the assignment did not comply with the Act's requirements, the award of compensation (pursuant to stipulation entered into by the United States and the assignee).

2. Whether summary judgment was properly granted in the circumstances of this case.

STATEMENT

This condemnation action involves an office building previously owned by petitioners. When the United States took temporary occupancy of part of the building (Pet. App. C), petitioners' title was subject to a mortgage. The mortgagee, City Investing Company ("City"), subsequently sought foreclosure of

its mortgage, but later in lieu of foreclosure accepted from petitioners a deed to the building and an assignment of petitioners' interest in the pending condemnation proceeding between petitioners and the government.[1]

Following this transaction, City and the United States stipulated that the total just compensation for the temporary taking was $178,000 (Pet. 11–13). City then petitioned the district court for distribution. The government advised the district court that if the judgment for total compensation was for the stipulated amount, it would not assert a defense based on the Anti-Assignment Act (see Pet. App. A 22).

Petitioners objected to the proposed distribution, and argued that City derived no rights under the assignment because the Anti-Assignment Act invalidated it. They also contended that in any event they had reserved from the assignment certain claims against the government for alleged restoration damages and "loss of equity."

The district court rejected petitioners' objections, fixed the condemnation award at the stipulated amount, and ordered distribution of the entire award

[1] Petitioners assigned to City "any sum of money found to be due from the United States of America resulting from the condemnation" then pending in the district court and empowered City to intervene in that suit as substitute condemnee. Petitioners further convenanted not to interfere with distribution to City of any condemnation proceeds payable "as a result of any adjudication, award or settlement." See Pet. 9–10.

to City.[2] It held that "[t]he Anti-Assignment Act is for the government's protection and only the United States may assert it" (Pet. App. A 22), and that therefore the assignment was not void as between petitioners and City. As to the restoration damages and the loss of equity questions, the court held that the present condemnation proceeding did not include or even affect these matters (Pet. App. A 22–25). The court of appeals affirmed *per curiam* "substantially for the reasons set forth" in the district court's opinion (Pet. App. B 28).

ARGUMENT

1. The petitioners are not entitled, as they urge (Pet. 13–14), to avoid their assignment to City or to protest the stipulation between City and the United States concerning just compensation because of the prohibitions of the Anti-Assignment Act (31 U.S.C. 203). The Act is for the benefit and protection of the United States. It is intended to relieve the United States from negotiating or litigating with strangers to the events giving rise to the claim and to preserve defenses which the United States has against the original claimant. *United States* v. *Shannon,* 342 U.S. 288, 291–292. The government may, as it did here, refrain from invoking the Act's protections (see *McGowan* v. *Parish,* 237 U.S. 285, 294). In such circumstances the Act does not disturb the rights of the parties to the assignment or relieve the assignor of

[2] The court treated City's petition as a motion for summary judgment (see Pet. App. A 15).

his obligations under it. See *Segal* v. *Rochelle*, 382 U.S. 375, 381–382, 384; *Martin* v. *National Surety Co.*, 300 U.S. 588, 596–597; *Freedman's Saving and Trust Co.* v. *Shepherd*, 127 U.S. 494, 506; see, also, *United States* v. *Munsey Trust Co.*, 332 U.S. 234, 237, n. 1. Petitioners' reliance (Pet. 2, 13) on *United States* v. *Dow*, 357 U.S. 17, is misplaced because there the government, not a private party, asserted that the Act invalidated the assignment in question (see 357 U.S. at 27).

2. There were no disputed factual issues resolved by the granting of summary judgment in this case. Petitioners' claimed restoration damages related to a period prior to the taking, and were accordingly not at issue in the condemnation proceeding. And, as the district court held (Pet. App. 23), the loss of equity claim was not an independent element in determining just compensation for the taking and was, in any event, expressly limited to damage resulting from "wrongful or arbitrary use of the power of condemnation." The courts below correctly held that, as a matter of law, such a claim, if it did survive the assignment, was not cognizable in the present proceeding but must be presented to the Court of Claims (*id.*). Since there were no disputed factual issues concerning what was to be decided here, it was proper for the district court to enter summary judgment.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
SHIRO KASHIWA,
Assistant Attorney General.
RAYMOND N. ZAGONE,
DIRK D. SNEL,
Attorneys.

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